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10 Attorneys for Defendant Tony Fu

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12 UNITED STATES BANKRUPTCY COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14

15 In re

16 Case No. 17-41205 CN

17 Tony Dong Xing Fu,

18 Chapter 7

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20 Debtor.

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22 Demas Wai Yan, Thai Ming Chiu, Legal
23 Recovery, LLC,

24 Adv. Proc. No. 17-04056

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26 Plaintiffs,

27

28 vs.

29 Tony Fu,

30 Defendant.

**OBJECTION TO
SUPPLEMENTAL
DECLARATION OF MARK
LAPHAM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

31

32 Date: December 3, 2018

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34 Time: 10:00 a.m.

35

36 Ctrm: 215

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38 U.S. Bankruptcy Court
39 1300 Clay Street
40 Oakland, CA 94612

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42 Defendant Tony Fu (“Defendant”) submits the following Objection to the Supplemental
43 Declaration of Mark Lapham in Support of Motion for Summary Judgment.

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45 The supplemental declaration is nothing more than an untimely attempt to correct defects
46 in the original moving papers. The Supplemental Declaration of Mark Lapham does not indicate

1 that it is a reply. It appears to be just an attempt to fix deficiencies in the evidence presented with
2 the moving papers. Reply papers should be limited to matters raised in the opposition papers. It is
3 improper for the moving party to “shift gears” and introduce new facts or different legal
4 arguments in the reply brief then presented in the moving papers. See *Lujan vs. Nat'l Wildlife*
5 *Fed'n*, (1990) 497 US 871, 894-895, 110 S.Ct.3177, 3192. – The court has discretion to disregard
6 late filed factual matters; *Zamani vs. Carnes*, (9th Cir. 2007) 491 F.3d 990, 997. The motion was
7 not supported by competent evidence and that cannot be corrected in the form of a reply.

8 The supplemental declaration also attaches additional pages to the transcripts. Page 8 of
9 the 341(a) transcript is new and pages 2 and 35 of the deposition transcript are new.

10 The supplemental declaration of Mark Lapham should be disregarded by the court.

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Dated: November 27, 2018

Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.

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By: /s/ Eric A. Nyberg

(Bar No. 131105)

Attorneys for Defendant Tony Fu

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DECLARATION OF SERVICE

I, the undersigned, declare:

I am employed in the City of Oakland, County of Alameda, California. I am over the age of 18 years and not a party to this action. My business address is 1970 Broadway, Suite 600, Oakland, California 94612.

I am readily familiar with the business practices of my employer, Kornfield, Nyberg, Bendes, Kuhner & Little, P.C., for the collection and processing of correspondence for mailing with the United States Postal Service and that correspondence is deposited with the United States Postal Service that same day in the ordinary course of business unless indicated below by electronic service.

On November 27, 2018, I served the following documents:

OBJECTION TO SUPPLEMENTAL DECLARATION OF MARK LAPHAM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

by placing copies of said documents in a sealed envelope by first class mail and served in the manner described below addressed as follows:

Via-ECF
Mark W. Lapham
Law Offices of Mark W. Lapham
751 Diablo Rd.
Danville, CA 94526

Via-ECF and First Class Mail
Demas Wai Yan
100 Pine Street, #1250
San Francisco, CA 94111

I placed such envelopes for collection and mailing at my employer's office following ordinary business practices, addressed to the addressee designated.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of November, 2018 at Oakland, California.

/s/ Gail A. Michael